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6 Attorneys for Specially Appearing Defendant  
7 VIEJAS BAND OF KUMEYAAY INDIANS, a  
8 federally recognized Indian tribe, erroneously sued  
as "VIEJAS FIRE DEPARTMENT"

9 **UNITED STATES DISTRICT COURT**  
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 JIM MAXWELL and KAY  
12 MAXWELL, individually and as  
13 guardians of TREVOR ALLEN  
14 BRUCE and KELTEN TANNER  
15 BRUCE; and JIM MAXWELL, as  
16 executor of the ESTATE OF  
17 KRISTEN MARIE MAXWELL-  
18 BRUCE,

19 Plaintiffs,

20 v.

21 COUNTY OF SAN DIEGO; ALPINE  
22 FIRE PROTECTION DISTRICT;  
23 VIEJAS FIRE DEPARTMENT;  
24 DEPUTY LOWELL BRYAN "SAM"  
25 BRUCE; DOES 1-50,

26 Defendants.

CASE NO. 07 CV 2385 JAH WMC

**NOTICE OF MOTION AND  
MOTION TO DISMISS FILED BY  
SPECIALLY APPEARING  
DEFENDANT VIEJAS BAND OF  
KUMEYAAY INDIANS**

CASE FILED: December 19, 2007  
IC JUDGE: Hon. John A. Houston  
DEPT: 11 (2nd Floor)  
DATE: March 3, 2008  
TIME: 2:30 p.m.

27 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

28 **PLEASE TAKE NOTICE** that on March 3, 2008, at 2:30 p.m. or as soon  
thereafter as counsel may be heard in Courtroom 11 of the above-entitled Court,  
located at 880 Front Street, San Diego, California, 92101, Specially Appearing  
Defendant VIEJAS BAND OF KUMEYAAY INDIANS (hereinafter the "Viejas  
Band" or the "Band"), a federally recognized Indian tribe, erroneously sued as the  
"VIEJAS FIRE DEPARTMENT" (hereinafter "Viejas Fire Department"), through

1 its attorneys of record, Higgs, Fletcher & Mack LLP, will move this court for an  
 2 order dismissing all claims against it with prejudice pursuant to Federal Rule of  
 3 Civil Procedure ("FRCP") 12(b)(1).

4 Viejas Fire Department is a part of the Viejas Band. Because the Band is  
 5 immune from unconsented suit, this Court lacks jurisdiction over the Viejas Band  
 6 and its fire department. Thus, the Viejas Band respectfully requests that the court  
 7 dismiss all claims against it.

8 This motion is made pursuant to FRCP 12(b)(1) and is based up this Notice  
 9 of Motion and Motion, and the Memorandum of Points and Authorities, the  
 10 Request for Judicial Notice, and the Declaration of Bobby L. Barrett, filed  
 11 concurrently herewith, and upon all documents, records, and files in this action, and  
 12 such oral and documentary evidence as may be presented at or before the time of  
 13 the hearing on this motion.

14 DATED: January 24, 2008

HIGGS, FLETCHER & MACK LLP

By: /s/ Phillip C. Samouris

PHILLIP C. SAMOURIS, ESQ.  
 MICHELLE L. GRANT, ESQ.  
 Attorneys for Specially Appearing  
 Defendant VIEJAS BAND OF  
 KUMEYAAY INDIANS

### MOTION

19 Viejas Fire Department hereby respectfully moves this court for an order  
 20 dismissing all claims against it with prejudice pursuant to FRCP 12(b)(1) for lack  
 21 of subject matter jurisdiction on the grounds that Viejas Fire Department is immune  
 22 from suit in this case pursuant to the doctrine of tribal sovereign immunity.

23 DATED: January 24, 2008

HIGGS, FLETCHER & MACK LLP

By: /s/ Phillip C. Samouris

PHILLIP C. SAMOURIS, ESQ.  
 MICHELLE L. GRANT, ESQ.  
 Attorneys for Specially Appearing  
 Defendant VIEJAS BAND OF  
 KUMEYAAY INDIANS